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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/677,221	10/03/2003	Takashi Ohsako	2003-1364A	8585

513 7590 05/17/2006

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EXAMINER

GARCIA, JOANNIE A

ART UNIT	PAPER NUMBER
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2823

DATE MAILED: 05/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/677,221	Applicant(s) OHSAKO ET AL.	
	Examiner Joannie A. García	Art Unit 2823	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 February 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11 and 13-35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 14-16 and 18-35 is/are allowed.
- 6) ☒ Claim(s) 11, 13 and 17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 11, 13, and 17, are rejected under 35 U.S.C. 103(a) as being unpatentable over Lee et al (U.S. Patent 5,639,678), in combination with Imamura et al (U.S. Patent 4,855,798), and the following comments.

Lee et al discloses forming a gate electrode 24 having a metallic silicide layer 30 on a semiconductor substrate 21 (Figure 2E), decreasing grain boundaries on a surface of the metallic silicide layer at least a portion of which is exposed, said decreasing the grain boundaries comprising performing a heat treatment on the metallic silicide layer in an atmosphere of a mixture of nitrogen and ammonia (Column 3, lines 57-65, and Column 5, lines 1-15), and forming a spacer 25 on a side wall of the gate electrode (Figure 2B, and Column 5, lines 62-67).

Lee et al discloses forming a metallic silicide layer 30 on a semiconductor substrate 21 using a titanium material layer performing a heat treatment at a temperature of 700 °C (Figure 2E, and Column 6, lines 1-17). Lee et al does not teach forming the metallic silicide layer using a tungsten material layer. Imamura et al discloses forming a gate electrode 18 having a metallic silicide layer 30 on a semiconductor substrate 10 using either a titanium material layer, or a tungsten material layer, among others (Figure 4E, and Column 7, lines 55-59). It would have been within the scope of one of ordinary skill in the art to combine the teachings of Lee et al and

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Imamura et al to enable the metallic silicide layer 30 formation step of Lee et al to be performed, by employing either of the materials disclosed by Imamura et al.

Lee et al discloses performing a heat treatment on the metallic silicide layer at a temperature of 700 °C (Column 6, lines 1-17). Lee et al discloses the claimed invention except for performing said heat treatment for a time of 30 sec to 40 sec at a pressure of 13 to 65 Pa including an oxidizable gas of less than 100ppm. It would have been obvious to one having ordinary skill in the art at the time the invention was made to determine a suitable time, pressure, and gas, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

In addition, the selection of a suitable time, pressure, and gas, it's obvious because it is a matter of determining optimum process conditions by routine experimentation with a limited number of species of result effective variables. These claims are prima facie obvious without showing that the claimed ranges achieve unexpected results relative to the prior art range. In re Woodruff, 16 USPQ2d 1935, 1937 (Fed. Cir. 1990). See also In re Huang, 40 USPQ2d 1685, 1688 (Fed. Cir. 1996)(claimed ranges or a result effective variable, which do not overlap the prior art ranges, are unpatentable unless they produce a new and unexpected result which is different in kind and not merely in degree from the results of the prior art). See also In re Boesch, 205 USPQ 215 (CCPA) (discovery of optimum value of result effective variable in known process is ordinarily within skill or art) and In re Aller, 105 USPQ 233 (CCPA 1995) (selection of optimum ranges within prior art general conditions is obvious).

Note that the specification contains no disclosure of either the critical nature of the

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claimed time, pressure, and gas, or any unexpected results arising therefrom. Where patentability is said to be based upon particular chosen time, pressure, and gas, or upon another variable recited in a claim, the Applicant must show that the chosen time, pressure, and gas, are critical. *In re Woodruf*, 919 F.2d 1575, 1578, 16 USPQ2d 1934, 1936 (Fed. Cir. 1990).

Claims 14-16, and 18-35, are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joannie García whose telephone number is (571) 272-1861. The examiner can normally be reached on Monday through Friday.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Matthew Smith, can be reached on (571) 272-1907. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



JAG
May 12, 2006

GFourson
Primary Examiner



George Fourson
Primary Examiner
Art Unit 2823